

BEFORE THE BOARD OF PERSONNEL APPEALS

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,)
AND HELPERS--LOCAL NUMBER 45,)
Complainant,)
-vs-)
LIBERTY COUNTY NURSING HOME,)
Respondent.)

ULP-5-1973

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

I STATEMENT OF CASE

Upon charges filed on December 28, 1973 by the Chauffeurs, Teamsters, Warehousemen and Helpers, Local Number 45, the Executive Secretary of the Board of Personnel Appeals of the State of Montana served the Notice of Hearing to be held on February 19, 1974. Copies of the charge and Notice of Hearing were duly served upon Respondent.

The Complaint alleges that the Liberty County Nursing Home, hereinafter referred to as Respondent, has engaged in and is engaging in unfair labor practices within the meaning of Section 59-1605 (1) (a), (b), (c), and (d), R.C.M., 1947 by discharge of Patricia Fox, threatened discharge of other employees, and continual harassment of employees. Also the Complaint alleges that by the above and other acts, the Respondent has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in R.C.M., 59-1603.

Respondent's answer, in substance, denies the above-mentioned allegations.

Pursuant to proper notice to the parties, a hearing was held before Jerry W. Toner, duly appointed Hearing Examiner, by the Board of Personnel Appeals. Said hearing was conducted in accordance with the provisions of the Montana Administrative Procedures Act (section 82-4201 to 82-4225, Revised Codes of Montana, 1947).

Upon the basis of the entire record of this case, including briefs of parties concerned, and from my observation of witnesses, their demeanor on the witness stand and reliable evidence, I make the following:

II FINDINGS OF FACT

1. The Respondent, Liberty County Nursing Home, is a public employer within the meaning of R.C.M., 59-1602(1).

2. Robert Brendgard was the Administrator of the Liberty County Nursing Home during the period of the alleged complaint. The Administrator carries out the policies established by the Hospital Board and County Commissioners and supervises all hospital employees.

3. The Complainant is the Chauffeurs, Teamsters, Warehousemen and Helpers, Local Number 45.

4. Patricia Fox was employed by the Liberty County Nursing Home as a nurses aid for approximately fifteen months prior to November, 1973 and was a public employee within the meaning of R.C.M., 59-1602 (2).

5. Patricia Fox was hired on a part time basis by Mr. Brendgard and was working three days per week, with Monday and Tuesday off until November, 1973.

6. Patricia Fox secured additional employment outside the Nursing Home on Mondays and Tuesdays of each week in the early fall of 1973.

7. The Complaint of Local Number 45 alleged that Patricia Fox was discharged because of her union sympathy or activity and that the discharge of this employee resulted in violation of Section 59-1603 and 59-1605, R.C.M., 1947.

8. The Respondent's contend that the discharge was unrelated to union activity or sympathy; and on the contrary was prompted by employee insubordination and defiance of authority.

9. Respondent has an established grievance procedure for aggrieved employees of the Nursing Home. An aggrieved employee can air his grievance before a personnel committee. The personnel committee consists of a representative from each department of the Hospital and Nursing Home. The Hospital and Nursing Home personnel manual states the grievance appeals mechanism is: "Staff meeting, personnel

1 committee, administrator, hospital board, county commissioners, court
2 of law."

3 10. Union organizing efforts began approximately eighteen
4 months ago. Brendgard testified that Betty Peterson, a nursing home
5 employee, wrote a letter to the Teamsters Union asking them to come
6 down and talk to the employees. Brendgard said that Peterson was
7 called to a personnel board meeting and that the personnel committee
8 made a recommendation to Mrs. Peterson that she drop the Teamsters
9 inquiry and she agreed. Brendgard also testified that whenever Fox
10 was talking about unions and wages, he found her insulting, argument-
11 ative and defiant. Mrs. Foster, a nursing supervisor, testified
12 that there was talk among the employees about the pros and cons of
13 unions. Fox testified that at a October 31, 1973 staff meeting Brend-
14 gard was talking more about unions than the employees. She said
15 none of the employees "were about to say much because they knew
16 they could get fired if the whole thing should come out."

17 Mrs. Schuhmacher, a hospital board member, made the statement
18 that she didn't want a union. Mr. Bill Fett, a member of the per-
19 sonnel committee, testified that he asked Pat Fox at a Personnel
20 Committee meeting whether she was involved in the union. Fox said
21 that she had attended meetings.

22 11. The record is replete with evidence that Brendgard was
23 aware of union organization activities at the nursing home prior to
24 the discharge of Pat Fox. Brendgard testified that he was aware of
25 union organizational activities in the fall of 1973 and that the
26 Teamsters Union had been talking to nursing home employees.

27 The record clearly establishes that Pat Fox was actively
28 engaged in union activities. In September of 1973, Pat Fox contacted
29 Lloyd McCormick, Secretary-Treasurer of Teamsters Local 45 in Great
30 Falls, and arranged a meeting between McCormick and hospital employees.
31 McCormick testified that his only contact with the hospital employees
32 was Fox and that he kept Fox apprised of all progress that the Union
was making toward an election.

1 The record shows that Brendgard was aware of Pat Fox's
2 participation in union activities. Brendgard attended a staff meeting
3 at the nursing home, October 31, 1973 with employees of the hospital.
4 During the meeting, Brendgard engaged in a heated discussion with
5 Pat Fox about unions and wages. Although Brendgard could not re-
6 member the details of the discussion, the testimony of Fox and others
7 in attendance at the meeting establishes that Fox was emphatic in her
8 defense of unions and criticized existing pay practices at the hospital.
9 At one point in the discussion, Brendgard was highly agitated and was
10 waving his arms and shaking his finger at Fox. Fox testified that
11 after she had questioned hospital pay practices, Brendgard stated that
12 he had heard that Fox had said that the nurses aides would have
13 never received raises unless they had applied pressure. Brendgard,
14 by this statement seems to be tacitly admitting Fox's participation
15 in union activities. Fox also testified that Brendgard told her
16 that he had talked to four people and was told that he should find
17 out who was at the bottom of organizing this union and fire that
18 one, to which Fox replied; "What is this, the Gestapo?" The clear
19 implication of Brendgard's statement was that Fox's union activities
20 might jeopardize her job with the hospital. Brendgard did not
21 directly deny making the statement but he did testify that he did
22 not recall making that type of statement or that he doubted that he
23 would make that type of statement. However, other hospital employees
24 present at the staff meeting corroborated Fox's testimony that Brend-
25 gard did indeed make the statement.

26 12. Brendgard testified that the scheduling of employees is
27 done by the supervisors of the Nursing Home, Mrs. Kulpas and Mrs.
28 Foster. Shortly after the heated staff meeting of October 31, 1973,
29 Brendgard ordered a schedule change. The schedule was posted on Nov-
30 ember 9, 1973. Brendgard testified that he was usually not involved
31 in the scheduling process but ordered it for two reasons:
32

1 1) "because the hospital was short-handed and 2) "after a discussion
2 with one of the physicians it was generally decided that Mrs. Fox
3 work as much as possible so she wouldn't have to be on welfare."

4 After the November 9th schedule was posted, but prior to the
5 meeting Fox had with Brendgard on November 4th, Mrs. Foster testified
6 that she did talk to Brendgard about Fox's schedule and he said he had
7 made his decision and was going to stand by it.

8 13. Brendgard testified that Pat Fox came to his office on
9 November 14, 1973 to discuss the schedule change. Brendgard said
10 that Fox told him she had another job on Mondays and Tuesdays. He
11 also testified that at this meeting he told Fox "she was a well qual-
12 ified aide but there was no way that we could put up with insubordination
13 of this kind." Brendgard further testified that the defiance of
14 authority charge was strictly on the basis of the one meeting on
15 November 14th when Fox came to ask about changing the schedule. Fox
16 testified that prior to the heated staff meeting she had always had
17 Monday and Tuesday of each week off at the Nursing Home. (See Fact
18 #13) Fox's employment was terminated on November 14, 1973 after the
19 private meeting with Brendgard. Fox testified that at that meeting
20 she was fired and given ten days notice. She stated that she stopped
21 in the hall and talked to Mrs. Kulpas about the schedule being dis-
22 criminatory and shortly thereafter Brendgard came out of his office
23 and told her to go home immediately. He picked up her time card and
24 took it. Fox then went back to Brendgard's office before leaving and
25 asked why she had been fired. Fox testified Brendgard answered "they
26 would talk about that when she decided to do something about it."

27 14. Fox requested a meeting with the Personnel Committee
28 on November 19, 1973 (Complainant Exhibit C-5). The Personnel
29 Committee met on the above date and recommended reinstatement and cited
30 the following five reasons for reinstatement: "(1) She was hired as
31 a part time employee but was changed to full time without her know-
32 ledge, a change which contributed to the situation for which she was

1 fired; (2) Because of the consensus of the people she works with that
2 she is a capable nurses aide; (3) Employment in hospital is essential
3 for the sole support of a 14 year old boy; (4) Her willingness to
4 come back to work to fill in vacant shifts when needed; (5) To
5 rehire her would keep it a hospital problem and not a community
6 Problem" (Complainant Exhibit C-6). Mr. Fett and Mr. Will of the
7 Personnel Committee testified that Brendgard said he would not rehire
8 Fox regardless of what the Personnel Committee recommended.

9 15. On November 21, 1973, Mrs. Fox requested a hearing be-
10 fore the Hospital Board (Complainant Exhibit C-7). A meeting was
11 scheduled for December 4, 1973 (Complainant Exhibit C-8). The Hos-
12 pital Board's decision at this meeting was that "Pat Fox be suspended
13 until after the first of the year and then consider rehiring her on
14 a trial basis." (Complainant Exhibit C-9).

15 16. The evidence before the Hospital Board consisted of three
16 written documents in evidence at the hearing; a statement by Dr.
17 McClure (Complainant Exhibit C-1), a petition for reinstatement signed
18 by fellow employees (Complainant Exhibit C-4) and recommendations of
19 the Personnel Committee (Complainant Exhibit C-6). Mrs. Mattson,
20 Chairman of the Hospital Board, testified that the Board had seen this
21 evidence, but felt that it was strictly a personality conflict between
22 Fox and Brendgard.

23 17. Pat Fox wrote to the County Commissioner, Chairman,
24 Troy Lakey, on December 5, 1973 and appealed for a hearing before
25 the County Commissioners (Complainant Exhibit C-10). Fox received
26 no formal hearing before the County Commissioners but did receive
27 a letter dated December 14, 1973 from Mr. Lakey stating that at a
28 special meeting of the County Commissioners on December 13, 1973 the
29 Commissioners decided to abide by the decision made by the Hospital
30 Board on December 4, 1973 (Complainant Exhibit C-11).

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1 18. The Nursing Home Supervisors, Foster and Kulpas, testified
2 that Fox was a good worker and good to her patients. Brendgard tes-
3 tified that he had not censured Fox for job performance prior to her
4 discharge.

5 III DISCUSSION

6 I find that the Respondent's discharge of Patricia Fox under
7 the circumstances detailed were in violation of the Collective Bar-
8 gaining Act for Public Employees and that the reasons given for her
9 discharge are pretextual. I have given weight to the following
10 considerations:

11 The timing of the discharge. The discharge took place shortly
12 after a very heated staff meeting in which Fox and Brendgard part-
13 icipated, at which time the testimony clearly shows unions and wages
14 were the major topics. There was testimony by several witnesses
15 that Brendgard was very angry with Fox during this staff meeting,
16 particularly when unions and wages were discussed. Although Fox had
17 been working as a part time aide for fifteen months previously, after
18 the October 31st staff meeting, Brendgard told the Nursing Supervisor,
19 Mrs. Foster, to put her on a five day schedule.

20 Reasons for discharge. According to Brendgard's testimony,
21 the discharge was effected as a result of insubordination at a private
22 conference between him and Mrs. Fox on November 14. The employee,
23 according to testimony, was not given any prior notice of discharge
24 and Brendgard, according to testimony of Fox, which was not disputed,
25 would not give any explanation the day he fired her. There was an
26 absence of prior censure, warning, criticism, or dissatisfaction by
27 the Administrator of Fox's work performance or attitude prior to the
28 discharge day.

29 I do not credit Brendgard's testimony that the private
30 November 14, 1973 meeting was the basis upon which he based his decision
31 to fire Fox. Brendgard testified that Fox was discharged because of
32 her insubordination and defiance of his authority at the private

1 interview with him. I give little credit to this when nothing concrete
2 showing insubordination to orders was established. When asked, "Have
3 you ever given her any order?" Brendgard replied, "No." There is no
4 evidence that Fox disobeyed Brendgard or was disrespectful to him on
5 any other occasion other than October 31st and November 14th. Dr.
6 McClure's letter (Complainant Exhibit C-3) stated that Brendgard
7 told him on November 12, that Pat Fox would certainly be fired, since
8 he had "tricked" her by scheduling her for more days than she wanted.
9 Dr. McClure was very reluctant to testify regarding his letter of
10 November 21, 1973. The Doctor testified that this letter was true
11 at the time he wrote it--"True as I can recollect." Considerable
12 weight is given to this evidence in view of the doctor's reluctance
13 to read the letter as well as his not denying its substance.

14 Brendgard's testimony is contradictory and not creditable
15 regarding his conversation with the doctor. Brendgard said Dr. Mc-
16 Clure just misunderstood him and what the Doctor said, according to
17 Brendgard was "when are you going to fire Pat Fox so I can have her
18 house." McClure's letter stated that Brendgard acknowledged this
19 option was not open since the county house was open only to hospital
20 employees and he planned to fire her before the end of the week. Also
21 McClure's letter said "Bob implied that she would not appear for
22 work on the extra days, thereby giving grounds for dismissal."

23 Union Activities of Employees. It is clear that Pat Fox
24 and other employees of the Respondent did engage in union activities
25 and that the Respondents had knowledge of those activities. Brendgard
26 testified that he was aware of union organizational activity in the
27 fall of 1973 and that the Teamsters were talking to hospital employees.
28 Although Brendgard denied knowing that he was aware of Fox's union
29 activities, their discussion at the staff meeting of October 31, 1973
30 shows otherwise.

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1 The schedule change. Brendgard's testimony is both confusing
2 and contradictory with regard to scheduling and is given little
3 credence. He testified that he did not handle scheduling. Later
4 testimony by Brendgard was "I told Mrs. Foster to put her on five
5 days, yes." Brendgard's explanation of why the schedule was changed
6 seems implausible. Reasons given were "mainly because we are short
7 of help" and "I had a discussion with one of the physicians of the
8 hospital and a welfare representative and it was generally decided that
9 Mrs. Fox work as much as possible so that she wouldn't have to be on
10 welfare." Fox was not requested to work five days per week prior to
11 the heated discussion involving union and wages, even when the hos-
12 pital was being operated short-handed. Further, testimony in the
13 record clearly shows that Mrs. Fox was never consulted about the change
14 and only knew about it when the schedule was posted on November 9,
15 1973. The Dr. McClure letter clearly indicates that the schedule change
16 was the vehicle to be used to force grounds for dismissal. Brendgard
17 ordered the change prior to the November 14th meeting with Fox,
18 the meeting he testified that effected her dismissal.

19 The Personnel Committee Recommendation. Testimony by
20 committee members clearly indicates that the committee believed that
21 Pat Fox should be rehired. Mr. Fett and Mr. Will both testified that
22 Mr. Brendgard told them he would not abide by the committee rec-
23 ommendation. Nevertheless, the committee still recommended her
24 reinstatement (Complainant Exhibit C-6).

25 IV CONCLUSIONS OF LAW

26 1. That Respondent's violated provisions of Section 59-1605,
27 R.C.M., 1947, and are guilty of unfair labor practices as specified in
28 Section 59-1605 (1) (a), (c), R.C.M., 1947 by discharging Patricia
29 Fox.

30 2. The discharge of said employee was motivated by the
31 employee's involvement in union organizational activity, which are
32 rights of public employees protected by Section 59-1603, R.C.M., 1947.

V ORDER

1. Having found that the Respondent has engaged in an unfair labor practice within the meaning of Section 59-1605(1)(a), and (c) and in violation of 59-1603(1) of that Act, it is ordered that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

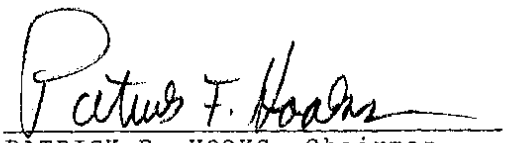
2. Take the following affirmative action.

(a) Offer to Patricia Fox immediate and full reinstatement of her former three-shift per week position and make her whole for any loss of pay suffered in consequence of her discharge because of her engagement in union activity.

(b) Notify the Executive Secretary of the Board of Personnel Appeals in writing, within twenty (20) days from receipt of this decision what steps have been taken to comply herewith.

(c) Post at its nursing home in Chester, Montana copies of the attached notice marked "Appendix". Copies of said notice on forms provided by the Board of Personnel Appeals, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

DATED THIS 17 day of June, 1974.


PATRICK F. HOOKS, Chairman
Board of Personnel Appeals

A P P E N D I X

NOTICE TO EMPLOYEES,
POSTED BY ORDER OF THE
BOARD OF PERSONNEL APPEALS
An Agency Of The State Of Montana

We will not threaten our employees with discharge because of their union activities.

We will not discharge or otherwise discriminate against our employees in regard to hire or tenure of employment, or any term or condition of employment, in order to discourage membership in any labor organization.

We will make Patricia Fox whole for any loss of pay suffered by reason of her discharge from the Liberty County Nursing Home, and offer her reinstatement to her former job.

We will not in any other manner interfere with, restrain or coerce our employees in the exercise of their right to self-organization, to form, join or assist Local No. 45, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representation of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

DATED this _____ day of _____.

Liberty County Nursing Home,
Employer

BY: _____
(Representative)
(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any material. Any questions concerning this notice or compliance with its provisions can be directed to the Board's office, 1434 Roberts Street, Helena, Montana 59601, Telephone 449-2890.

STATE OF MONTANA
BOARD OF PERSONNEL APPEALS

CERTIFICATE OF MAILING

I, Robert R. Jensen, hereby state and certify that I did,
on the 19th day of June, 1974, mail a true copy of the Board of
Personnel Appeals ORDER in the matter of Teamsters, Chauffeurs,
Warehousemen and Helpers -- Local Number 45, versus Liberty County
Nursing Home, by depositing a true and correct copy in the United
States mail, in an envelope securely sealed with certified postage
prepaid, addressed to them at their last known address as follows:

George Rouff, Attorney
P. O. Box 548
Havre, Montana 59501

Benjamin Hilley, Attorney
1713 10th Avenue South
Great Falls, Montana 59405

Donald R. Marble, County Attorney
P. O. Box "C"
Chester, Montana 59522

Robert R. Jensen
Executive Secretary

NOTARY PUBLIC for the State of Montana